



# *Technical Trade Report*

*Updates on Key Trade Policy Issues Affecting APHIS*

**November 1997**

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## **CONTENTS**

- **Letter from the TST Director**
- **Status of Negotiations to Revise the International Plant Protection Convention (IPPC)**
- **Resolving Trade Disputes in the World Trade Organization**
- **APHIS: Bridging the gap between trade and domestic operations**
- **APHIS SPS Accomplishments Report Fiscal year 1996**

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<<http://www.aphis.usda.gov/is.tst>>

## **APHIS Trade Support Team (TST) Letter from the TST Acting Director "Responding to Global Challenges Facing APHIS"**

Over the past two years, APHIS managers have spent considerable time, through a series of meetings, retreats, and other fora analyzing the global situation and the challenges facing APHIS, particularly with regard to trade. This article presents some of the views at this point regarding APHIS' international role, particularly in the context of trade.

First, the United States has new international trade obligations under the GATT Uruguay Round Agreement on Sanitary and Phytosanitary Measures, or the SPS Agreement. The basic intent of the SPS Agreement is to ensure that health restrictions on trade are imposed only for justifiable reasons and not more restrictive to trade than absolutely necessary. To achieve this, the SPS Agreement contains a number of obligations that require governments to base their import requirements on scientific evidence and principles; to publish and make transparent their import regulations; avoid arbitrary or unjustified discrimination in how similar or identical risks are treated; and lastly, obligations to adapt import requirements to the specific health conditions of a zone, region, or area where a product originates.

Clearly, implementing these SPS obligations, including conducting risk assessment, recognizing pest and disease free areas, making equivalency

determinations, being transparent in the rulemaking process, etc represent new workload challenges for APHIS. In particular, the workload associated with import risks assessments is increasing. An increasing number of requests made by other governments to approve new commodities is anticipated. APHIS will continue to seek efficient, state-of-the-art, risk assessment systems to conduct timely, consistent, and scientifically based risk assessments on imports. Such actions are critical to accurately identify and manage pest and disease risks to American Agriculture, ensure compliance with the WTO SPS Agreement, and ensure that other countries treat U.S. exports in an equal fashion.

Second, agricultural trade liberalization initiated under the Uruguay Round is expected to continue as the Administration contemplates free trade agreements in the Americas and in the Asia-Pacific region. These free trade initiatives will continue to stimulate agricultural trade and interest among foreign producers to export to the U.S. The number of risk assessments which will need to be performed on new import requests will increase as a result of this trade liberalization trend.

Third, APHIS is being challenged by the increasing interest of American agriculture in expanding U.S. agricultural exports. The Department will continue with its aggressive export effort, placing emphasis on exports of high value products and trying to expand market access into a variety of foreign markets. These goals of expanding American agricultural trade will require

a high degree of APHIS support to provide health information on U.S. products and to address foreign health requirements. Clearly, industry support will be increasingly necessary in terms of providing the necessary surveillance and monitoring data to support the statements the U.S. makes about the safety of a particular commodity.

Fourth, APHIS will be increasingly focused on promoting and enhancing a predictable and stable global trade environment that contains high but SPS-consistent sanitary and phytosanitary standards for the protection of animal and plant health. Creating a stable, predictable, and biologically safe trade environment will depend on the availability and use of international standards. To this end, APHIS will seek to increase its participation and leadership in the relevant standard setting organizations and to, the greatest extent possible, use relevant international standards in its rulemaking. APHIS is currently thinking about including in the texts of proposed and final rules a section which refers to the use or non-use of relevant international standards. The Agency sees this as a way to demonstrate and make transparent the use of applicable international standards.

Last, Agency staffs are becoming increasingly cognizant of the APHIS role in an interdependent global economy and the impact of APHIS import decisions on trade. Many countries look to the United States for scientific and regulatory leadership and closely observe how SPS obligations such as risk assessment are implemented. There is a feedback loop that goes from U.S. import decision making to the way other countries assess

and treat U.S. agricultural exports to them. In short, USDA import decisions can have the unintended effect of setting de facto standards that are mimicked by other countries. For this reason, there is a need to be increasingly aware of the impact that APHIS can have on setting the terms of international trade in the SPS area and to strive for the high ground by establishing levels of protection that are consistent with the health protection to be expected for U.S. agricultural products presented for export to other countries.

John K. Greifer

### **Status of Negotiations to Revise the International Plant Protection Convention (IPPC)**

Negotiations to revise the IPPC, underway since March 1996, were completed during FAO Council meeting held in Rome on June 2-7. The purpose for revising the IPPC is to modernize the Convention by incorporating up-to-date plant quarantine concepts and, most significantly, to bring the Convention into alignment with the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (i.e., SPS Agreement). An APHIS team participated in each step of the negotiations.

Technical negotiations, which took place in January and April 1997, led to a final draft text, with very little bracketed language remaining. This draft IPPC text was submitted to the FAO Council which met in Rome on June 2-7. The FAO Council formed an Informal Working group to negotiate through the

remaining bracketed text. The Working Group was successful in negotiating a final draft text without brackets. This final draft text, approved by the FAO Council, will be submitted to the FAO Conference for its consideration. The Conference meets in Rome in November 1997.

At the April COAG meeting, several African delegations raised their concerns that the IPPC negotiations had failed to adequately include the participation of experts from their respective capitals. To address their concerns, the FAO organized a closed consultation for representatives of the African countries. This consultation for the African countries, funded by the Netherlands, was successful in terms of providing a comprehensive review of the issues and ensuring African support for the revised Convention text at the Council meeting.

***Key elements in the amended Convention include:***

1. Establishment of a Commission for Phytosanitary Matters: Negotiations resulted in agreement to establish a Commission to oversee implementation of obligations in the Convention and, most significantly, to provide for an efficient standard setting mechanism within the IPPC framework. The Commission would also ensure that future Phytosanitary Standards are developed and adopted by technical experts from the contracting parties, rather than depending upon the review and approval by non-technical officials who normally attend FAO governing bodies.

Given the lengthy time gap which is likely to exist between Conference

approval of the revised Convention and its final acceptance (or ratification) by FAO contracting parties, the Council is recommending the establishment of an interim Commission. An interim Commission would: a) allow more standards to be reviewed in a timely fashion than under the current procedure, b) enable technically competent authorities to review and discuss the standards, c) install a better system immediately without having to wait for ratification by two thirds of the contracting parties of the revised Convention, and d) immediately allow contracting parties to acquire practical experience in operating a Commission. Funding would come from the FAO's existing program budget which covers plant protection and IPPC-related activity.

2. Regulated Non-quarantine Pest: The revised IPPC covers "regulated non-quarantine pests." The traditional focus of the Convention has been on quarantine pests (i.e., pests that do not exist in the importing country or are present but are limited in their distribution and are under official control). The revised Convention expands this scope to cover "regulated non quarantine" pests. These are pests which are present in the importing country and are under some form of control to keep their population at specified levels. Disciplines are established in the revised Convention which require that phytosanitary requirements taken against "regulated non quarantine" be transparent, technically justified, and no more restrictive than measures imposed at the domestic level.

3. Technical Justification: The revised Convention text is aligned with the WTO Sanitary and Phytosanitary Agreement (SPS) and reinforces the basic disciplines of that trade agreement by requiring countries to base phytosanitary measures on scientific evidence and principles. The revised IPPC text incorporates various SPS-related disciplines including transparency of measures, use of pest risk assessment, development and use of standards, use of least restrictive measures, and avoidance of unjustified discrimination.

4. Certification: The revised IPPC has new language in the model phytosanitary certificate. The new language on the model certificate makes reference to regulated non-quarantine pests and makes optional (for the exporter) the statement that the shipment or consignment has been inspected and "deemed to be practically free of other pests." Also, a new amendment (in Article XX.6 of the revised Convention) has been introduced which will allow contracting parties to make future revisions to the model certificate without having to re-open the entire Convention text to re-negotiation.

5. Provisions Allowing for European Community (EC) Adherence to IPPC: New language was included which allows for EC entrance as an IPPC contracting party with provisions which clarify its rights and obligations (and those of its member states) under the revised Convention. The EC is an FAO member but not an IPPC signatory. The revised Convention includes provisions which allow for EC adherence to the IPPC. Language from FAO Basic Texts outlines the rules and conditions for

entry and participation of a member organization and its member states. The U.S. position is that it is preferable to have the EC as a contracting party to the IPPC rather than operating outside this basic international framework, particularly when the WTO obliges countries to base their measures on IPPC standards.

### *Next Steps*

The final draft text approved by FAO Council will be submitted to FAO Conference (FAO's highest governing body) and to FAO's Committee for Constitutional and Legal Matters (CCLM) for their consideration. The CCLM review, which occurs in October 1997, will be critical to provide a legal review and determination on whether the revised Convention contains new obligations.

The FAO Council has recommended that the Conference adopt the revised Convention when it meets in November 1997. Failure to adopt the newly revised IPPC this year means that it will not be reconsidered for another two years, due to the biennium meeting schedule of Council and Conference. The text would most likely have to be renegotiated all over again.

The amended Convention is subject to "acceptance" or "ratification" by contracting parties, depending on contracting parties' determination of whether or not the amended Convention contains new obligations. If the parties conclude that the revised Convention presents no new obligations, then, the Convention would come into force when 2/3 of the contracting parties deposit their instruments of acceptance with

FAO (see Article XIII. 4 of existing Convention). If the parties believe that the amended Convention contains new obligations, the revised IPPC would come into force whenever each contracting party has ratified it under their respective legislative requirements. Hence, an important next step to be taken before the FAO Conference meeting in November is for the U.S. Department of State to make a determination on whether the revised IPPC represents new obligations. It is hoped that the State Department will agree that the newly revised IPPC does not contain new obligations.

From a technical and regulatory perspective, the amended IPPC does not represent new obligations but rather clarifies existing regulatory practices. APHIS already implements (in fact, has been doing so for quite some time) responsibilities and functions described in the amended Convention. It should also be noted that the revised Convention incorporates SPS principles from the WTO SPS Agreement. Therefore, obligations such as conducting risk assessments, making publicly available information regarding phytosanitary requirements and their basis (i.e., transparency requirements), and participation in the development and use of international standards are obligations the United States, and other contracting parties, have already assumed under the WTO SPS Agreement.

## **Resolving Trade Disputes in the World Trade Organization**

This article is intended to provide an examination of how sanitary and phytosanitary (SPS) trade disputes are

resolved from the US perspective through the new system established by the Final Act of the Uruguay Round and the U.S. implementing legislation, the Uruguay Round Agreements Act (URAA).

Bringing any dispute to the WTO Dispute Resolution System requires at least three essential elements in the domestic process for building a case: coordination and communication, support and strong science. Some requirements to build these elements are clearly explained in U.S. and WTO legal documents; others are still being formulated. Because the system for resolving disputes is so new, it can be assumed that as more cases are brought forward and contested, additional tinkering as to how to develop and bring a dispute forward will take place.

One primary change in the new world of trade caused by the Uruguay Round Agreements was the end of fragmented system under the GATT in which contracting parties could choose whether they wanted to adhere to the various Tokyo Round Agreements and pursue disputes through the general GATT or special Tokyo Round dispute settlement mechanisms. The new WTO system is unified, with only one Dispute Settlement Body dealing with disputes arising from any agreement in the Final Act. It is a clearly defined process, and one that can work well, if a case is handled properly.

### ***The Domestic Process - Interagency***

The responsibilities of the U.S. Government regarding dispute settlement and the WTO are spelled out in Section 127 of the Uruguay Round

Agreements Act (URAA). Among other things, Section 127 requires the United States Trade Representative (USTR), at all stages of WTO dispute settlement, to a) consult with petitioners (if any) under Section 302(a) and private sector advisory committees; b) consider the views of appropriate interested private sector and non-governmental organizations; and c) notify the public through a Federal Register notice of proceedings, and solicit written inputs.

Under the Trade Expansion Act of 1962, the President established an interagency trade policy mechanism to assist with the implementation of these responsibilities. This organization consists of three tiers of committees that constitute the principal mechanism for developing and coordinating U.S. Government positions on international trade and trade-related investment issues.

The Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), administered and chaired by USTR, are the subcabinet interagency trade policy coordination groups that are central to this process. The TPSC is the first line operating group, with representation at the senior civil servant level. Supporting the TPSC are more than 60 subcommittees responsible for specialized areas and several task forces that work on particular issues.

Through the interagency process, USTR assigns responsibilities for issue analysis to members of the appropriate TPSC subcommittee or task force. Conclusions and recommendations of this group are then presented to the full TPSC and serve as the basis for reaching an interagency consensus. If agreement is

not reached in the TPSC, or if particularly significant policy questions are being considered, issues are taken up by the TPRG (Deputy USTR/Under Secretary level).

Member agencies of the TPRG and the TPSC consist of the Departments of Commerce, Agriculture, State, Treasury, Labor, Justice, Defense, Interior, Transportation, Energy, Health and Human Services, the Environmental Protection Agency, the Office of Management and Budget, the Council of Economic Advisers, and the International Development Cooperation Agency; the National Economic Council and the National Security Council have a joint representative. The U.S. International Trade Commission is a non-voting member of the TPSC and an observer at TPRG meetings. Representatives of other agencies also may be invited to attend meetings depending on the specific issues discussed.

The final tier of the interagency trade policy mechanism is the National Economic Council (NEC). Chaired by the President, the NEC is composed of the Vice President, the Secretaries of State, the Treasury, Agriculture, Commerce, Labor, Housing and Urban Development, Transportation, and Energy, the Administrator of the Environmental Protection Agency, the Chair of the Council of Economic Advisors, the Director of the Office of Management and Budget, the United States Trade Representative, the National Security Advisor and the Assistants to the President for Economic Policy, Domestic Policy and Science and Technology Policy. All executive departments and agencies, whether or

not represented on the Council, coordinate economic policy through the Council.

The NEC Deputies Committee considers decision memoranda from the TPRG, as well as particularly important or controversial trade-related issues. Trade-related issues that raise important national security concerns also may be taken up in the Deputies Committee of the National Security Council.

During the interagency review stage, advice is generally sought from the private sector advisory committees and from Congress. While nearly all issues are developed and formulated through the interagency process, USTR advice, occasionally, may differ from that of the interagency committees. As policy decisions are made, USTR assumes responsibility for directing the implementation of that decision. Where desirable or appropriate, USTR may delegate the responsibility for implementation to other agencies.

### ***The Domestic Process -Agriculture***

At Agriculture, the Secretary formed an interagency action team in 1995 whose mission is to identify SPS issues, including market retention problems, which may disrupt U.S. agricultural trade and develop strategies for responding to potential or real disruptions. Paul Drazek, Special Assistant to the Secretary on trade issues, leads this SPS Action Team. The SPS Action Team meets on an ad hoc basis in the Secretary's Office with senior-level representation from the various agencies, including APHIS, GIPSA, FSIS, FAS, and others depending on the issues.

The SPS Action Team relies on a lower level staff meeting, which takes place Tuesday mornings, for information on emerging trade issues. The Tuesday staff level meeting is led by FAS and is attended by technical and staff level personnel from APHIS, GIPSA, FAS, FSIS, AMS, and other agencies. Most of the issues discussed at this meeting are primarily plant or animal health issues, and generally are of a more urgent nature.

Beginning in October 1996, APHIS and FAS initiated monthly strategy meetings (also involving all USDA agencies, with occasional participation from the State Department and USTR) to further the effort of identifying high priority issues and developing coordinated action steps to resolve these issues. These monthly meetings are aimed at developing strategies, whereas the Tuesday meetings are aimed at tracking issues, discussing their status, and identifying emerging issues.

It is often during the two staff-level meetings discussed above that potential issues for dispute resolution will first surface. There might be a report that industry is particularly interested in resolving an issue, or an action by a foreign government will prompt a closer look at the action's implications within the scope of the WTO SPS Agreement. Once the issue has surfaced and if it clearly warrants further discussion, an ad hoc group within USDA is usually called together at the staff level to discuss the matter in greater depth.

This is the working of the first essential element of an effective dispute resolution mechanism: coordination and communication. There are no clear-cut



rules as to the make up of the ad hoc group, although it should consist of subject matter experts (i.e., plant or animal health specialists from APHIS, ARS or any other relevant agency), trade policy analysts (from both FAS and the regulatory Agency concerned), and a representative from the Office of the General Counsel for the legal perspective. While the process itself is internal to the Government, industry should be consulted as a matter of course. Initially, however, the group may consist solely of subject matter and policy specialists to ensure a thorough review of the issue under the terms of the SPS Agreement is carried out, and that there is a consensus that the issue should be moved toward dispute resolution.

It cannot be stressed strongly enough how essential this body is to bringing any dispute forward. Within USDA, APHIS (or any other regulatory agency), FAS, ARS and the General Counsel's Office must work together and not in a vacuum. This becomes even more important as the issue moves forward and the group expands to include USTR. All of the parties need to know all of the information on the issue to enable effective coordination. Effective communication and coordination among all of the parties can prevent any single Agency from being "blind sided" in meetings with their foreign counterparts during the consultation phase. Indeed, effective coordination and communication will allow the responsible agencies to present a common position in separate discussions on an issue with their foreign counterparts, thus eliminating any potential effort to divide and conquer by

the foreign party by playing one agency against the other.

The next vital element in the internal process is support. Support for pushing the issue forward must come from the senior leadership of the Agencies concerned, as well as from industry. Obviously, if there is no industry support for bringing the issue to the dispute resolution, there is not much point in pushing the case. If there is, and there is a consensus within the Department that the case is worth pursuing, then the issue should go forward. It should be underscored, however, that industry and government should work together to the extent possible to build the most effective case. The final ingredient in the support process is the endorsement from the senior levels to bring the case forward.

The third essential element to developing a case is strong science. This is the critical "evidence" portion of the case. If there is a legitimate scientific reason for the foreign government to take whatever offending action it is taking, and this can be supported with factual evidence, then there is not much of a case to pursue. On the other hand, if the action is in, or suspected to be in, violation of any of the principles in the WTO SPS agreement, and there is scientific evidence that can be used to convincingly explain the impropriety of the foreign government's action, the case should be pursued. This includes all the elements of the scientific process, to include conducting the appropriate risk assessments.

With these three elements in place, and all of the proper clearances obtained, the case can go forward. Any case for the

WTO Dispute resolution process requires an intensive effort and multiple resources. In the current environment, the resources are scarce and the demands are great. Nevertheless, a case can be developed and brought to the WTO process (described below) if a coordinated process is followed.

### ***The WTO Dispute Settlement Process***

The Understanding on Rules and Procedures Governing the Settlement of Disputes ("Dispute Settlement Understanding" or "DSU"), which is annexed to the WTO Agreement, provides a mechanism to settle disputes under the Uruguay Round Agreements. Thus, it is key to the enforcement of U.S. rights under these Agreements.

The DSU is administered by the Dispute Settlement Body (DSB), which includes representatives of all WTO members. The DSB is empowered to establish dispute settlement panels, adopt panel and Appellate Body reports, oversee the implementation of panel recommendations adopted by the DSB and authorize retaliation. The DSB makes all its decisions by "consensus."

Under DSU procedures, a government must start dispute settlement by seeking consultations. Consultations give a chance to settle problems by discussion, and to find out more facts. The complaining government generally must wait 60 days after a consultation request, before taking the next step and requesting establishment of a panel. Special shorter timetables are provided for disputes concerning perishable goods and other cases of urgency, as well as some complaints by developing countries.

A panel request must be in writing and must provide specific information on the dispute. A dispute settlement panel will be established no later than at the second DSB meeting at which the panel request is on the agenda (unless there is a consensus otherwise). The standard terms of reference call for the panel to address the relevant provisions of any covered Uruguay Round agreement cited by the parties to the dispute. Panels are normally composed of three persons, experienced in trade policy and trade law, who normally are not citizens of the disputing parties. If the parties do not agree on panelists within 20 days after panel establishment, the WTO's Director-General (in consultation with the parties to the dispute, the chair of the DSB, and the chair of the relevant committee or council) will appoint the panelists if either party so requests.

If more than one country brings a dispute on the same matter, the DSU encourages convening of a single panel. For instance, in 1995, three disputes brought by the EU, Canada and the United States concerning taxation of distilled spirits in Japan were consolidated, and have been heard by a single panel. Disputes brought by Chile and Peru against the EU on the labeling of scallops in France have been heard by a panel convened earlier to hear a dispute brought by Canada against the EU on the same issue.

A WTO member government can also submit its views to a panel as an "interested third party" if it has a substantial interest in the matter before the panel and notifies the DSB on a timely basis. In 1995, the United States submitted views as an interested third party in the disputes brought by Canada,

Chile and Peru on the labeling of scallops in France.

Panels set their own timetables, within time-limits set by the DSU. The working procedures set out in the DSU provide for panels to meet twice with the parties, preceded by submissions from all sides. The panel drafts a report, consisting of a description of the dispute, a record of the arguments, findings of fact, and application of legal rules to the facts. The panel issues an interim report to the parties to the dispute, who can review and comment on it and can ask the panel to review specific points. The panel then issues its final report to the parties and circulates it to all WTO Members. In general, the time between panel establishment and circulation of the final report should not exceed six months (three months for disputes concerning perishable goods or other urgent matters). The maximum period for panel proceedings is nine months unless a complaining party requests suspension of the panel proceedings. The DSB must adopt all panel reports within 60 days after they are circulated, unless a party to the dispute notifies the DSB that it will appeal the decision (or the DSB decides by consensus to reject the report.)

The DSU provided for a new seven-person Appellate Body (AB) to hear appeals from dispute settlement panels. Three-person appellate panels drawn from the AB will review issues of law and legal interpretation notified to it by a disputing party. The AB may uphold, modify, or reverse the panel's legal findings and conclusions.

When it finds a measure is inconsistent with one of the covered agreements, a panel or the AB must recommend that

the Member concerned bring that measure into conformity with the agreement. At a DSB meeting held within 30 days after the panel or AB report is adopted, that Member must state its compliance plans. The "reasonable period" for compliance can be determined by obtaining DSB approval of a time period proposed by that Member, or by agreement between the disputing parties, or by binding arbitration. The DSU suggests that this period normally should not be longer than 15 months from adoption of the report. The overall time from panel establishment until the date the implementation period is set may not exceed 15 months unless the period is extended by the parties, the panel, or the Appellate Body. No extension may increase the time to more than 18 months unless the parties to the dispute agree that there are exceptional circumstances.

If a Member does not comply with the recommendation to bring a measure into conformity with its WTO obligations, it must negotiate with the complaining Member(s) on compensation, and the negotiations must start by the end of the "reasonable period." If there is no agreement on compensation by 20 days after the end of the "reasonable period," a complaining Member may ask the DSB to authorize it to suspend trade benefits with respect to the noncomplying party. By 30 days after the end of the "reasonable period," the DSB must grant such a request to suspend benefits (unless there is a consensus otherwise). Such a suspension must be equivalent to the benefits the defending Member is impairing by its WTO-inconsistent actions.

## ***Conclusion***

If the fundamental principles of coordination, communication, sound science and strong support from the appropriate resources are elements in the internal U.S. process of bringing a dispute to the WTO, an effective case will be put forth. If one or more elements are missing, however, the process will be severely impaired and will probably break down. It is important to remember that this process should not be concrete. As more experience is gathered, it should be adapted and improved.

The WTO process itself is straightforward and clearly defined. It offers a means for solving those issues that cannot be otherwise worked out bilaterally. Nevertheless, it should be a last resort, if for no other reason than the amount of resources and time it takes to pursue a case to its conclusion.

## **APHIS: Bridging the gap between trade and domestic operations**

(Exports climbed to \$59.8 billion in 1996 ... and the U.S. share of global agricultural trade has also increased. Today we are the world's leading exporter of agricultural products, commanding a 23 percent share of world agricultural trade -- up from 17 percent a decade ago. Our agricultural trade surplus totaled \$27 billion in 1996 -- the largest in history -- making the agricultural sector the largest positive contributor to the U.S. balance of trade.) Statement by Secretary Glickman before the Senate Committee on Agriculture, Nutrition and Forestry, June 18, 1997.

Much has been said about the primary mission of APHIS -- whether it is to protect American agriculture from foreign diseases and pests, or to facilitate the export of American food and fiber products by helping our farmers and producers meet the animal and plant health standards of importing countries.

Without question, APHIS' role as a domestic regulatory agency is primary; however, because of its role in developing and enforcing import requirements, as well as in providing key services to facilitate exports, APHIS must also focus its resources on issues relating to international trade.

For some, this debate has been reduced to a zero-sum game -- agency resources used to support trade diminish those that should be used to protect our borders and domestic production. This polarization of APHIS' mission has resulted in the creation of a false dichotomy with respect to APHIS' core functions.

While a real division of labor exists between work related to trade and domestic operations, the perspective that one function is carried out at the expense of the other is misleading. Trade support and domestic protection activities should not be viewed as conflicting; rather, they should be viewed as complementary, mutually reinforcing, and interdependent. Each core function draws on the support of the other to achieve successful outcomes. For example, understanding the SPS requirements imposed by important trading partners, in part, governs where APHIS' resources for domestic activities should be applied. In turn, the strength of our domestic activities to control pests

and diseases helps APHIS meet foreign countries' SPS requirements, and in some cases, challenge unscientific standards/requirements of other countries.

Consider for a moment APHIS' work to protect U.S. borders. Without these measures in place to mitigate the spread of pests and diseases via imports of contaminated commodities, the challenge U.S. exporters would face in terms of meeting another country's SPS requirements would increase dramatically. Moreover, without APHIS' domestic programs to monitor, survey, impose Federal quarantines and conduct eradication programs, the animal and plant health of U.S. agricultural commodities would not be as widely accepted throughout the world as they are today. Without the maintenance of a strong domestic program, APHIS' ability to certify to the SPS requirements of other countries would be weakened.

In economic terms, the benefits of APHIS' domestic regulatory programs can be viewed as the avoidance of potential losses to the export market in the event that pest and disease outbreaks are allowed to persist. It follows logically that the more APHIS does to reduce pests of concern to other countries, the fewer hurdles U.S. agricultural products will face, and the greater the market share they will achieve. One internal study estimates that almost \$7 billion in U.S. agricultural exports were protected from potential SPS barriers by the intervention of APHIS and other Agencies. Simply put, given the public investment in protecting U.S. agriculture, why not leverage this investment to facilitate exports? If more and more of our farm income is going to

come from export revenue as mentioned in the Secretary of Agriculture's remarks above, APHIS must continue to help the farm sector demonstrate to the world that our domestic SPS practices add value to our commodities. And when foreign countries are reluctant to hear that message, and unfairly obstruct our agricultural exports, APHIS must be prepared to support government-wide efforts to use those policy instruments available to challenge bogus animal and plant health import standards/requirements.

## **APHIS SPS Accomplishments Report Fiscal Year 1996**

### ***Introduction***

APHIS personnel have made and continue to make major contributions in resolving issues related to the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (referred to in this report as the "SPS Agreement," or simply SPS). Data documenting these accomplishments must be collected in such a way that APHIS decision-makers can easily retrieve and use them.

To meet this data need, the APHIS Trade Support Team (TST) has begun to maintain a database of APHIS' SPS accomplishments. The first annual report documenting the value of results from SPS work done by APHIS personnel in fiscal year 1996 (FY96) follows.

FY96 APHIS' Accomplishments Report  
for 96

### ***Export Issues***

In FY96, APHIS' SPS accomplishments included the resolution of trade barrier issues worth nearly \$7 billion dollars in exports of U.S. agricultural commodities. This represents about 12 percent of the total \$60 billion of U.S. agricultural exports in FY96.

The \$7 billion of unjustified trade restrictions on U.S. exports involved a wide variety of issues with a total of 16 separate countries. The value of export markets enhanced by these efforts ranged from a low of \$400,000 for an individual issue (export access for goats to Taiwan; export access for swine to Vietnam) to a high of \$4.9 billion (worldwide wheat export markets retained after threatened cut-offs due to karnal bunt in the United States). The median value of the SPS issues was \$5 million.

In FY96, APHIS' efforts to retain markets threatened by SPS concerns resulted in nearly \$6 billion of exports. The retention of U.S. wheat export markets threatened by the discovery of karnal bunt in some areas of the United States was the largest contributing issue (\$4.9 billion). Another large market retained in FY96 was the \$700 million Russian poultry meat market, which was threatened by Russian concerns about sanitary controls of the U.S. poultry industry.

A third major SPS accomplishment, expansion of poultry meat exports to China, was worth an estimated \$1 billion in FY96.

These three issues -- wheat exports threatened by karnal bunt, poultry meat to Russia, and poultry meat to China -- were worth a total of \$6.6 billion, or

about 95 percent of the total value of APHIS' SPS accomplishments for FY96. All three issues were related to legitimate concerns about plant or animal health for countries importing U.S. products. The issues were resolved in the United States' favor because APHIS scientists were able to demonstrate that the commodities involved posed negligible risks to the importing countries.

### ***Import Issues***

In FY96, consistent with its obligations under the SPS Agreement, APHIS enabled the importation of several previously prohibited commodities into the United States. Through the use of risk assessment, APHIS determined that these commodities, worth almost \$16 million in increased exports for the countries involved, did not pose a threat to U.S. animal and plant health. These import issues are considered APHIS SPS accomplishments, because prohibiting the importation of these commodities might have been considered an unjustified SPS trade barrier. By actively heading off potential challenges, APHIS was able to show its commitment to the SPS Agreement while still maintaining adequate safeguards for U.S. agriculture.

Use of APHIS SPS Accomplishments Data TST anticipates that this and future APHIS SPS accomplishments reports will:

Provide justification for budgets or requests for additional resources for SPS,

Provide information for APHIS testimony at Congressional hearings on SPS,

Enable the Agency to publicize SPS accomplishments,

Provide a basis to reward teams and individuals for accomplishments in SPS, and

Enable the Agency to better plan and monitor its trade functions.

What is an "SPS Accomplishment?"

For this report, the APHIS employees who are most frequently involved in dealing with SPS issues -- the Plant Protection and Quarantine Phytosanitary Issues Management Team (PIMT) and Veterinary Services' National Center for Imports and Exports (NCIE) -- were asked to provide data about SPS accomplishments. To enhance the integrity of the data in this report and to ensure that these staffs supply the TST with consistent data in subsequent years, the term "SPS Accomplishment" was defined.

Several components are critical to the definition of "SPS Accomplishment." They are:

The concept of "sovereign right" in the SPS Agreement,

Countries' obligations under the SPS Agreement,

What constitutes an "SPS issue," and

How countries deal with and resolve SPS issues.

The SPS Agreement maintains that it is the sovereign right of any government to provide the level of animal and plant health protection it deems appropriate to

protect its agricultural resources. In order to ensure that sovereign rights are not misused for protectionist purposes resulting in unjustified barriers to trade, the Agreement specifies that countries should base their animal and plant health requirements on internationally-accepted standards. If an appropriate standard does not exist, or if a country chooses to apply more stringent requirements, then that country has the obligation to demonstrate that its requirements are based on sound science.

For APHIS, an SPS issue arises when an exporter or importer requests to "move" something across an international border, and it becomes necessary for APHIS scientists to discuss with their foreign counterparts scientific issues related to the movement request. Depending on the nature of the issue, the exchange of scientific information may quickly lead to agreement that the commodity can move. In other cases, agreement cannot be reached on interpretation of the scientific data involved in the request. In this case, if an exporting country believes that the importing requirements are unjustified on scientific grounds, the issue may be referred to appropriate dispute resolution mechanisms.

APHIS scientists become involved at many points in discussions about the potential movement of an agricultural commodity. This involvement may concern either a request to export something out of the United States, or a request by a foreign country to have a commodity imported into the United States. This report measures the economic value of both imports and exports - both are critical to the success of the United States in fulfilling its

obligations under the SPS Agreement, and both require significant contributions of APHIS resources. For purposes of this report, an SPS accomplishment takes place when an SPS issue is resolved in a way that enables the movement of commodities and satisfies the health concerns of the countries involved.

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information regarding this report please  
contact the APHIS Trade Support Team  
at 202/720-7677.